Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1468

FIRST NATIONAL BANK OF PEORIA,
Petitioner,

v.

GAREY R. CHILDS, et al.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Nos. 77-2029 and 77-2030
DAVID J. BASHAM, LINDA C. BASHAM, GREGORY D. VOGELSANG and DONNA I. VOGELSANG,
Plaintiffs-Appellants,

vs.

FINANCE AMERICA CORPORATION,
Defendant-Appellee.

No. 77-2031
GAREY R. CHILDS, on behalf of himself and all others similarly situated.
Plaintiff-Appellant,

vs.

FIRST NATIONAL BANK OF PEORIA,
Defendant-Appellee.

No. 77-2032
SUSAN M. STEELE,
Plaintiff-Appellant,

vs.

THORP CREDIT, INC., OF ILLINOIS,
Defendant-Appellee.

No. 78-1059
VICKIE SHOLL and DEBBIE BRASCHE, on behalf of themselves and all others similarly situated,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

No. 78-1060
BRUCE P. DORETHY, on behalf of himself and all others similarly situated,
Plaintiff-Appellant,

vs.

BUSHNELL FINANCE COMPANY,
Defendant-Appellee.

No. 78-1061
JAMES E. ROUNDS,
Plaintiff-Appellant,

vs.

HOUSEHOLD FINANCE CORPORATION,
Defendant-Appellee.

No. 78-1062
DEAN BRASCHE and CHARLENE BRASCHE,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

No. 78-1063
JAMES E. ROUNDS,
Plaintiff-Appellant,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

No. 78-1064
ROBERT N. SHARP and MARY E. SHARP,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

No. 78-1065
RICHARD D. CORBIN and CHERI CORBIN,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

No. 78-1066
FRED H. TIBBITS, VICKEY L. TIBBITS, and JAMES S. BRANNON, Trustee in Bankruptcy for Fred H. Tibbits,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

No. 78-1067
KEITH A. DEJAYNES, DIANE M. DEJAYNES, and RAYMOND E. BURGER, Wage Earner Trustee,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

No. 78-1068
JEFFREY C. BROWN and CINDY S. BROWN,
Plaintiffs and Counter-Defendants-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant and Counter-Plaintiff-Appellee.

No. 78-1069
RICK JOHNSON,
Plaintiff-Appellant,

vs.

MID AMERICA CREDIT, INC., now HEIGHTS FINANCE CORPORATION,
Defendant-Appellee.

No. 77-2179
ROBERT N. SHARP and MARY E. SHARP,
Plaintiffs-Appellants,

vs.

THE FIRST NATIONAL BANK OF PEORIA,
Defendant-Appellee.

No. 77-2180
FORT MADISON BANK & TRUST CO.
Plaintiff and Counter-Defendant-Appellee,

vs.

CHARLES E. COLLINS and PATRICIA D. COLLINS,
Defendants and Counter-Plaintiffs-Appellants and Third-Party Plaintiffs,

vs.

HART MOBILE HOMES, INC.,
Third-Party Defendant-Appellee.

No. 78-1058
In the Matter of:
WILLIAM ERNEST ANDERSON,
Debtor.

Appeal of:
WILLIAM ERNEST ANDERSON,
Debtor, and

RAYMOND E. BURGER,
Wage Earner Trustee.

No. 78-1198
SHERYL K. HAWK and FRANKLIN HAWK,
Plaintiffs-Appellants,

vs.

GENERAL FINANCE CORPORATION OF ILLINOIS, a corporation,
Defendant-Appellee.

Appeals from the United States District Court for the Southern Division of Illinois, Peoria Division.
Civil Nos. 77-1053 and 77-1059, 77-1072, 77-1060, 77-1080, 77-1081, 77-1083, 77-1088, 77-1089, 77-1090, 77-1093, 77-1102, 77-1107, 77-1116, 77-1117, 77-1087, 77-1119 and 77-1120, 77-1139 and 78-1107—Bankruptcy Nos. 77-10547 and 77-10548.
Robert D. Morgan, *Judge.*

Argued June 14, 1978—Decided August 16, 1978

Before CUMMINGS, SPRECHER and BAUER, Circuit Judges.

SPRECHER, Circuit Judge.

This case is a consolidation of nineteen Truth in Lending actions which were either dismissed or upon

which summary judgment was granted for defendants. Numerous issues are raised, the primary ones being the liability of creditors when disclosures are made in conformity with Federal Reserve Board ("Board") regulations, official staff interpretations or unofficial staff letters; the extent of required disclosure by a creditor of a security interest in after-acquired property; the compliance of various loan forms with the requirement that the disclosures therein be made clearly, conspicuously and in meaningful sequence; and whether the one-year statute of limitations on Truth in Lending actions applies to counterclaims filed by a debtor in response to a secured creditor's claim or a claim for reclamation.

I

These appeals arise out of alledged violations of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601, *et seq.*, the regulations promulgated thereto ("Regulation Z"), 12 C.F.R., part 226, the Illinois Uniform Commericial Code ("UCC"), Illinois Revised Statutes 1975, chapter 26, §§ 1-101, *et seq.*, and the Illinois Consumer Fraud Act, Illinois Revised Statutes 1975, chapter 121½, §§ 261, *et seq.*

All of the creditors and the transactions described in the complaints are subject to regulation under TILA, Regulation Z, the Uniform Commercial Code and the Consumer Fraud Act. All of the transactions were consumer credit transactions within the meaning of 15 U.S.C. § 1602(h), in that the party to whom credit was offered or extended was a natural person, and the money, property, or services which were the subject of the transaction were primarily for personal, family, household, or agricultural purposes. All but one of the nineteen appeals involve close-end consumer loans under 15 U.S.C. § 1639.[1]

[1] One of the appeals, *Fort Madison Bank and Trust Co. v. Collins*, (No. 77-2180) is a sale by a mobile home dealer under 15 U.S.C. § 1638. The contract in the *Fort Madison Bank* case was immediately assigned by the dealer to the bank in a typical dealer-paper transaction. No appeal here involves the extension of "open-end" credit under 15 U.S.C. § 1637.

All of these cases were decided adversely to plaintiffs upon motions to dismiss or motions for summary judgment and therefore turn almost entirely on the resolution of questions of law involving construction of the statute, regulations and loan documents. For this reason, combined with the fact that most of the legal issues involve more than one case, the facts of individual cases will be discussed only where necessary to resolve an issue or where differing facts would dictate a different result. Otherwise, in the interest of brevity, only a general description of the transaction involved will be given.

II

Plaintiffs' first claim[2] is that defendants failed to disclose "[t]he amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf" in

[2]The twelve cases involving this claim are 78-1059 through 78-1069 and 78-1198. Plaintiffs also argue that cases 77-2029 and 77-2030 involve this claim. A perusal of the record indicates that the original complaints raised only the issue of an improper security interest on the part of defendants in these latter cases. While a motion to amend the complaint in each case was filed, these motions, according to the docket sheet, were withdrawn by plaintiffs on September 2, 1977. Therefore, this issue was neither raised nor ruled upon in the district court and is therefore not before us on appeal in those two cases. For the same reason, plaintiffs' additional claim in 77-2030 that credit life insurance charges were not disclosed is not before us.

Plaintiffs also argue that 78-1058 involves this issue. That case, however, was decided solely on a statute of limitations question and this is the only issue before us on appeal of that case. *See* Part V *infra*.

violation of 15 U.S.C. § 1639(a).[3] This section of the statute requires that a creditor disclose that amount designated by the above quotation in addition to all charges for insurance or other purposes, individually itemized. Finally, these two figures must be added together and disclosed to determine the total amount financed.

Defendants do not deny that they failed to disclose the amount required by § 1639(a)(1). Rather, they contend that their disclosure forms, which only included the individual itemized charges and the total amount financed, were in full compliance with the Board's Regulation Z § 226.8(d)(1), 12 C.F.R. § 226.8(d)(1), which requires disclosure of:

> The amount of credit, . . . which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed."

A careful reading of this portion of Regulation Z indicates that it requires only the disclosures spelled out in §§ 1639(a)(2) and (a)(3) of the TILA, which defendants here

[3]15 U.S.C. § 1639(a) provides in relevant part:

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

gave, thereby implicitly allowing the actual proceeds of the loan to remain undisclosed.[4]

Assuming, without deciding, that defendants must comply with the statute even where it differs from the Board's regulations,[5] it is clear that failure to disclose the actual proceeds of the loan violates § 1639(a)(1) of the TILA. Thus we are presented with a situation, accounted for by Congress in 15 U.S.C. § 1640(f), where action in good faith conformity with Regulation Z is found violative of the TILA:

> No provision of this section or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such

[4] This conclusion is also reached in *Pollock v. General Finance Corp.*, 535 F.2d 295, 298-99 (5th Cir. 1976), *aff'd on rehearing*, 552 F.2d 1142, 1143-44 (5th Cir. 1977), *cert. denied*, 434 U.S. 891, 98 S.Ct. 265, 54 L.Ed.2d 176 (1977). It is to be noted, however, that the simple arithmetical procedure of subtraction will yield the "undisclosed" figure.

[5] Defendants argue that the Board has authority under 15 U.S.C. § 1604 to provide for variations and exceptions to the statute such as that involved here. While we need not decide that issue in this case, we note that a similar argument was rejected in *Pollock v. General Finance Corp.*, 552 F.2d 1142, 1143-44 (5th Cir. 1977), *cert. denied*, 434 U.S. 891, 98 S.Ct. 265, 54 L.Ed.2d 176 (1977). Defendants also claim that Congress has acquiesced in the Board's construction of the statute in this manner since 1969 and therefore this construction must be given weight. *See generally Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 313, 53 S.Ct. 350, 77 L.Ed. 512 (1933); *Zemel v. Rusk*, 381 U.S. 1, 11, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965). Given our disposition of the broader issue of liability, we need not address this argument.

> rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Since defendants' disclosures have followed the requirements of Regulation Z[6] no civil liability may be imposed upon them according to § 1640(f) for having failed to make the disclosure required by § 1639(a)(1). Therefore, the district court properly concluded that no claims existed on this basis.[7]

III

Plaintiffs claim that defendants' loan documents attempt to grant the creditor an overbroad and unlawful

[6] *See also* Federal Reserve Board Letter No. 982 (December 24, 1975) CCH Consumer Credit Guide paragraph 31,321, to the effect that loan proceeds need not be disclosed. The statute itself mandates that disclosures be "in accordance with the regulations of the Board." 15 U.S.C. § 1631(a).

[7] Section 1640(f) limits its exemption from liability to "good faith" conformity to regulations and interpretations. We do not reach the issue of whether continued adherence by the creditors to their present form of disclosure after at least one circuit has ruled that it is illegal vitiates their "good faith." *See Pollock v. General Finance Corp.*, 535 F.2d 295 (5th Cir. 1976), *aff'd on rehearing*, 552 F.2d 1142 (7th Cir. 1977), *cert. denied*, 434 U.S. 891, 98 S.Ct. 265, 54 L.Ed.2d 176 (1977).

Nor do we decide whether mere coincidental conformity with the Board's regulations are sufficient for exculpation under § 1640(f). *See Jones v. Community Loan & Inv. Corp.*, 544 F.2d 1228, 1231-32 (5th Cir. 1976), *cert. denied*, 431 U.S. 934, 97 S.Ct. 2642, 53 L.Ed.2d 250 (1977). The regulation relied upon here became effective on July 1, 1969, the same day as the TILA, and has never been amended. Reliance on this regulation as initial and continuous guidance in complying with the statute is apparent from the disclosure forms used by defendants.

Finally, in No. 78-1198, the issue of whether a TILA claim passes to the wage earner trustee in a Chapter XIII bankruptcy proceeding is argued. In light of our conclusion that no civil liability exists here, we do not decide that issue. *See also Matter of Dickson*, 432 F.Supp. 752 (W.D.N.C.1977).

security interest in the debtors' after-acquired consumer goods.[8] A creditor desiring to hold a security interest must make the following disclosure under 15 U.S.C. § 1639 (a)(8):

> A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

Regulation Z, § 226.8(b)(5), 12 C.F.R. § 226.8(b)(5) requires:

> A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

[8]This issue involves appeals 77-2029 through 77-2032. Plaintiffs claim that 77-2180 is also involved. A perusal of the record indicates that 77-2180 was decided solely on a statute of limitations question and is therefore the issue of a security interest and that case is not before us on appeal. *See* Part V *infra*.

The legal extent of a security interest is determined according to state law and section 9—204(2) of the Illinois Uniform Commercial Code (UCC) Ill. Rev. Stat. ch. 26, § 1-101 *et seq.*, provides in relevant part:

> No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

Therefore, plaintiffs argue that defendants violated section 1639(a)(8) of the TILA and section 226.8(b)(5) of Regulation Z by claiming to cover more than UCC section 9-204(2) allows and by failing to disclose the time limitation imposed on such clauses by this section of the UCC.

The leading case in this circuit on the after-acquired property security interest is *Tinsman v. Moline Beneficial Finance Co.*, 531 F.2d 815 (7th Cir. 1976). There this court held that disclosures of security interests that fail to indicate state law limitations on such security interests do not fulfill the disclosure requirements of the TILA and Regulation Z. In particular, debtors' security interest there covered more property than allowed by the statute and also did not disclose that any security interest was limited to property acquired within 10 days after the secured party gives value.

The security interest clauses in three of the four cases involved here do not contain any reference to a time

limitation.[9] This failure to indicate this limitation on the security interest violates the TILA and Regulation Z under our holding in *Tinsman*. *See also Pollock v. General Finance Corp.*, 535 F.2d 295, 300 (5th Cir. 1976), *aff'd on rehearing*, 552 F.2d 1142, 1144-45 (5th Cir. 1977), *cert. denied*, 434 U.S. 891, 98 S.Ct. 265, 54 L.Ed.2d 176 (1977); *Johnson v. Associates Finance, Inc.*, 369 F.Supp. 1121, 1122-23 (S.D.Ill.1974).

Defendants, however, claim reliance on unofficial staff opinions of the Board for the contention that the disclosure here was made in good faith reliance upon Board interpretations of the TILA and therefore subject to no civil liability under section 1640(f). *See* Federal Reserve Letters Nos. 829, 983 and 1053, CCH Consumer Credit Guide, paragraphs 31,151, 31,323, and 31,393.[10]

[9] Nos. 77-2029, 77-2030 and 77-2031. No. 77-2031 also appears to improperly claim an interest in more than merely accessions. The security agreement states flatly that it "will cover after acquired property," no limitation of the kind of property covered being given. Defendants argue that they have in good faith relied on Exhibit E of the Model Forms provided with a pamphlet entitled, "What You Ought to Know About Truth in Lending" and therefore should be immune from liability under 15 U.S.C. § 1640(f). These forms, however, are merely samples "solely for purposes of demonstration" as the disclaimer at the bottom of the form states. *See Johnson v. Associates Finance, Inc.*, 369 F.Supp. 1121, 1123 (S.D.Ill. 1974); *Bone v. Hibernia Bank*, 354 F.Supp. 310, 311 (N.D.Cal.1973), *reversed on other grounds*, 493 F.2d 135 (9th Cir. 1974). Reliance on such a form, where it is contrary to the law of the jurisdiction, is not sufficient to insulate defendants from liability under § 1640(f).

[10] The extent of reliance on these letters to support defendants' position is itself open to question. Letter 829, August 22, 1974, seems to indicate that the strictures of state law must be followed in describing the security interest. While Letter 983, December 30, 1975, seems to backtrack from this position, Letter 1053, May 28, 1976, followed and stated:

> It appears from your letter that these creditors are disclosing a security interest in "all after-acquired property" or "all after-acquired property including all attachments, substitutions, and replacements." If, in fact, the applicable State law only permits acquisition of a security interest in after-acquired property acquired within a certain period of time, then such a statement would be improper under Regulation Z.

This ignores the fact that these unofficial staff opinion letters are explicitly excepted from reliance under Regulation Z, section 226.1(d)(4)(iii). The latest interpretation from the Board, post-dating the staff letters relied on by defendants, is an Official Staff Interpretation which concludes that the statement that a creditor holds "a security interest under the Uniform Commercial Code" is a sufficient description when the creditor obtains a security interest under the UCC. *See* Federal Reserve Board Official Staff Interpretation (November 19, 1976), CCH Consumer Credit Guide, paragraph 31,491. Without deciding whether this Official Staff Interpretation is consistent with *Tinsman*, we note that defendants cannot rely on this Official Interpretation since the language in their disclosure forms makes no mention of the UCC.

In holding that defendants cannot rely on the unofficial staff letters under the facts of this case, we realize that such letters are an important informative function of the staff of the Board which, although not binding on a court, are entitled to deference and may prove helpful to a decision in a given case. *Philbeck v. Timmers Chevrolet, Inc.*, 499 F.2d 971, 976-77 (5th Cir. 1974); *Frank v. Reserve Consumer Discount Co.*, 398 F.Supp. 703 (D.Pa.1975). In the instant cases, however, the disclosure forms give a clearly mistaken impression of the extent of time the security interest may be in effect. As we stated in *Tinsman v. Moline Beneficial Finance Company*, 531 F.2d 815, 818 (7th Cir. 1976):

> A reading of the form would lead the debtors to conclude erroneously that the security interest extends to all [consumer] goods . . . at any time the loan agreement is in effect, even though Illinois law precludes such a security interest covering consumer goods acquired more than 10 days after the secured party gives value.

The disclosures required here are not onerous and their uniformity is enhanced by the fact that the UCC has

been adopted by 49 states. Moreover, the fact that defendants cannot in actuality claim any greater security interest than is allowed by state law is of no consequence. Although the inclusion of language in the forms which does not limit the security interest to 10 days fails to extend that interest beyond the limited period, it does mislead the consumer. As was stated in *Ives v. W.T. Grant Company*, 522 F.2d 749, 761 (2d Cir. 1975):

> Whether [a creditor] actually retains a security interest is irrelevant. On its face, the contract provides for a security interest and for [a creditor] to reveal later that there is none is hardly the type of disclosure Congress thought would "permit consumers to compare the cost of credit among different creditors and to shop effectively for the best credit buy."

Therefore the district court erred in dismissing these claims.

In the fourth case, No. 77-2032, the security agreement explicitly excepts "after acquired consumer goods acquired more than 10 days after the date hereof." Defendant in this case has complied with the TILA and Regulation Z.[11] Dismissal of the complaint was properly allowed by the district court.

[11] Plaintiffs also attempt to premise a claim on language in the security interest purporting to cover "all substitutions and replacements." Assuming that substitutions and replacements for collateral cannot be the subject of a security interest after 10 days (*See Tinsman v. Moline Benefical Finance Co.*, 531 F.2d 815, 816 (7th Cir. 1976)), such goods must, by definition, be considered as being "of the same or similar type" as those secured. Thus the 10-day limitation contained in the agreement covers these goods as well:

> Debtor further grants to Secured Party a security interest in all goods, personal property and chattels of the same or similar type or kind to that described above now owned or hereafter acquired, excepting only after acquired consumer goods acquired more than 10 days after the date hereof.

No valid claim of violation is therefore made.

IV

The next contention is that defendant[12] violated the TILA and Regulation Z, 12 C.F.R. § 226.6(a), which provides in relevant part:

> (a) Disclosures; general rule. The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections.

See also 15 U.S.C. § 1631(a). This regulation is designed to insure that the disclosures follow a logical order and are not scattered throughout the agreement. *See* Staff Opinion Letter No. 780 (April 10, 1974), CCH Consumer Credit Guide paragraph 31,102.

Allen v. Beneficial Finance Company of Gary, 531 F.2d 797 (7th Cir.), *cert. denied*, 429 U.S. 885, 97 S.Ct. 237, 50 L.Ed.2d 166 (1976), deals with the issue of meaningful disclosure. According to *Allen*, 531 F.2d at 801, "meaningful sequence" requires that disclosure statements basically must follow two criteria:

> Thus, meaningful sequence first requires groupings of logically related terms. Second, meaningful sequence requires that the terms in these groupings be arranged in a logically sequential order emphasizing the most important terms.

Plaintiffs complain that the disclosure statements make disclosures horizontally instead of vertically. This fact does not, however, make the disclosures misleading. The

[12] This issue involves Nos. 78-1059 and 78-1061 through 78-1069. Plaintiffs also claim that Nos. 77-2029, 77-2030 and 78-1058 involve this issue. For the reasons discussed in note 2 *supra*, however, this issue was not reached in those cases and is not before us on appeal.

key factor is reasonable proximity and comprehensibility. As Staff Opinion Letter 780 (April 10, 1974) states:

> We realize that it is not always practical to list the items in vertical order, but in keeping with the purpose of the Truth in Lending Act, they should be placed in reasonable proximity to each other so that the customer will not be required to search for any arithmetical items which should logically follow a previous one.

The forms involved here satisfy this requirement even though the disclosures are horizontal in nature.

Plaintiffs next suggest that the use of a subtractional disclosure in several of the forms violates the "meaningful sequence" rule. While it was noted in *Allen*, 531 F.2d at 802, 804, that the subtractional method is not favored, the court stated that the "requirements of meaningful sequence cannot be applied mechanically or rigidly."[13] In *Allen* the statement contained some figures listed horizontally and others listed in two vertical columns. Groupings of terms were located at random. The columns of numbers appeared to add up when in reality they did not. The same charge was listed twice under two difference titles. The court, 531 F.2d at 802, described this attempt at disclosure as follows:

> The present defendant has failed in almost every respect to provide disclosures in meaningful sequence in the present disclosure statement. The court below cited ten instances in which the disclosure statement failed to set forth the required information in a meaningful sequence.

[13] Subsequent to the decision in *Allen*, the Board issued Staff Opinion Letter No. 1047 (May 20, 1976), CCH Consumer Credit Guide paragraph 13,387, commenting on *Allen* that no particular form of statement was required so long as the relationship among the terms is clear, thereby providing the consumer with a clear and adequate basis on which to shop for credit.

In contrast, the subtractional disclosure statements here contain a logically sequential series of disclosures beginning with the total amount of required payments, the finance charge, the amount financed, the charges for credit life, and credit disability insurance, the total number of payments and the annual percentage rate. Perusal of the forms indicate that while this particular sequence is not additional, it is logical and meaningful. This is all that the TILA, Regulation Z and the *Allen* decision require.[14] *See also* Official Staff Interpretation (March 21, 1977), CCH Consumer Credit Guide paragraph 31,552. Therefore, the decision of the district court that the disclosures in these forms were made in a "meaningful sequence" must be sustained.

V

Two of the cases[15] concern the issue of whether, after filing a petition under Chapter XIII of the Bankruptcy Act, the debtors may respond to a filing of a claim or a reclamation petition by alleging TILA violations on the part of the creditor, even though the TILA claim is beyond the statutory limitation period. Plaintiffs contend that their action is not time barred since their claim is one of recoupment.

The limitation period for TILA claims provides in 15 U.S.C. § 1640(e):

[14] *See generally* Annotation, "Meaningful Sequence" Requirement of Regulation Z (12 C.F.R., pt. 226.6(a)), 33 A.L.R.Fed. 751 (1977).

[15] Nos. 77-2180 and 78-1058. In 77-2180, plaintiffs also argue that the creditors violated Regulation Z § 226.8(a). For the reasons discussed in note 8 *supra*, this issue is not before us. Also, in light of our disposition of the statute of limitations issue, plaintiffs' further argument relating to the vacating of the default judgment need not be addressed. In any case, the district court has wide discretion in granting such relief. *See* Fed.R.Civ.P. 60(b) and Bankruptcy Rules 755(b) and 924.

> Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

There is no dispute that debtors failed to make a claim within one year from the date of the occurrence. *See also Goldman v. First National Bank of Chicago*, 532 F.2d 10 (7th Cir.), *cert. denied*, 429 U.S. 870, 97 S.Ct. 133, 50 L.Ed.2d 150 (1976). Rather, debtors claim that somehow their action was revived when creditors made claims in response to debtors filing for voluntary bankruptcy under Chapter XIII. The bankruptcy judge and the district court rejected this claim in both cases.

Failure to bring an action for damages within the one-year limitation period bars the action. *See Jamerson v. Miles*, 421 F.Supp. 107 (N.D.Tex.1976); *Fenton v. Citizens Savings Association*, 400 F.Supp. 874 (C.D.Mo.1975). Where a counterclaim seeks to assert a separate cause of action for an independent wrong, it generally may not be instituted after the applicable statute of limitations has expired. *See Smith-Johnson Steamship Corp. v. United States*, 231 F.Supp. 184 (D.Del.1964). We believe that this rule applies to these cases as well. Debtors argue, however, that a counterclaim is not barred where it seeks "recoupment" rather than affirmative relief. This argument must fail here even assuming that the doctrine of recoupment may assist the claiming party in a given situation. *See Bull v. United States*, 295 U.S. 247, 262, 55 S.Ct. 695, 79 L.Ed. 1421 (1935). The TILA claim presented by debtors seeks affirmative damages under 15 U.S.C. § 1640(a)(2). They do not claim however that they were actually damaged in any way as a result of the claimed TILA violations.[16] Nor do they claim that the alleged TILA

[16] *See* 15 U.S.C. § 1640(a)(1). We express no opinion concerning the availability of a counterclaim after the limitation period where debtors would seek to have the recovery by creditor reduced by the amount of actual damages sustained by debtors in, for example, overpayment of finance charges. *See also* 15 U.S.C. § 1640(h). Certainly, however, such a claim is much closer to the concept of "recouping" something unlawfully taken by the creditor.

violations somehow negate the validity of the underlying loan transaction.[17] The TILA claim is not directed at or an answer to the underlying debt.[18]

Viewed in this manner, debtors in bankruptcy have brought suit for affirmative relief based on alleged TILA violations. The fact that the creditors being sued have filed claims in the bankruptcy proceeding has no material relevance. Debtors action is barred by the one-year statute of limitations contained in 15 U.S.C. § 1640(e).[19] The design of TILA was to provide protection to consumers by affording them meaningful disclosure and thereby an opportunity to shop for credit. It was not designed, nor should it be used to thwart, the valid claims of creditors. The district court properly dismissed these claims on the authority of the statute of limitations.

VI

In *Sharp v. First National Bank of Peoria*, No. 77-2197, plaintiffs, husband and wife, allege that defendant failed

[17] Thus, it has been held that the one-year limitation period does not apply to an action for rescission under 15 U.S.C. § 1635. *See Littlefield v. Walt Flanagan & Co.*, 498 F.2d 1133 (10th Cir. 1974).

[18] It has been held that a TILA claim and the underlying loan transaction are not so related as to be the subject of a compulsory counterclaim under Rule 13(a), Federal Rules of Civil Procedure. *See Gammons v. Domestic Loans of Winston-Salem, Inc.*, 423 F.Supp. 819 (M.D. N.C. 1976), and cases cited therein.

[19] We recognize that the state courts have split on this question. *See generally* Annotation, Time Limitations Under 15 U.S.C. § 1640(e) on Truth in Lending Suits, 36 A.L.R.Fed. 657 (1978); Note, *Restrictions on Defenses and Counterclaims Based on Truth In Lending Violation*, 13 Wake Forest L.Rev. 189 (1977). This split is attributable mainly to a variation in state statutes. Even ignoring the questionable use of state statutes to modify a federal cause of action controlled by an explicit federal limitations period, such statutes do not bind the federal courts. *See also* 15 U.S.C. § 1640(h), which denies any offset under § 1640(a)(2) unless the liability has been judicially determined.

to give them any documents or disclosure statements necessary to comply with the TILA or the Motor Vehicle Retail Installment Sales Act of Illinois, Ill.Rev.Stat., ch. 121½, § 573. Defendant filed a motion to dismiss and attached a copy of a loan document signed by Robert N. Sharp. Plaintiffs responded by filing only an affidavit by Mary Sharp. The district court granted defendant's motion to dismiss.

Plaintiffs' claim under the Illinois Statute is without merit. The statute is designed to apply where a retail automobile sales establishment provides or procures financing for the vehicles it sells, not where independent bank financing is obtained. *See generally Rivera v. Dick McFeely Pontiac, Inc.*, 431 F.Supp. 506 (N.D.Ill. 1977); *Lucas v. Park Chrysler Plymouth, Inc.*, 62 F.R.D. 399 (N.D.Ill. 1974). Thus, the section which plaintiffs claim defendant violated provides in relevant part:[20]

> The seller shall deliver to the buyer a copy of the retail installment contract signed by the seller. Any acknowledgment by the buyer of delivery of a copy of the contract must be printed or written in a size equal to at least 10 point bold type and, if contained in the contract, must appear directly above the legend required above the buyer's signature by paragraph (1) of Section 3. The Buyer's written acknowledgement of delivery of a copy of the contract conforming to the requirements of this Act is conclusive proof of such delivery and of compliance with this Section in any action by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

This section clearly contemplates the situation where the

[20] Ill.Rev.Stat., ch. 121½, § 573.

automobile dealer, the "seller,"[21] arranges the financing and is therefore not applicable to the bank in this case.

Regarding the TILA claim, defendant filed a motion to dismiss and attached a copy of the loan agreement signed by Robert Sharp. The loan document provides, above Mr. Sharp's signature, that debtor "acknowledges receipt of a completely filled in copy prior to execution thereof." This acknowledgment by Mr. Sharp created a rebuttable presumption that the required disclosures were made.[22] Mr. Sharp failed to rebut this presumption by filing an affidavit or otherwise pleading further. The dismissal of the TILA claim was therefore proper.[23] *See Whitlock v. Midwest Acceptance Corp.*, 76 F.R.D. 190 (E.D.Mo.1977).

[21] Ill.Rev.Stat., ch. 121½, § 562.3, defines this term:

> "Retail seller" or "seller" means a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.

The bank is not in the business of selling motor vehicles. *See also* Ill.Rev.Stat., ch. 121½, §562.4:

> "Retail installment transaction" means a credit sale of a motor vehicle by a retail seller to a retail buyer for a deferred payment price payable in one or more installments.

[22] 15 U.S.C. § 1635(c) provides:

> Notwithstanding any rule of evidence, written acknowledgement of receipt of any disclosures required under this subchapter by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

[23] Plaintiffs argue that the filing of an affidavit by Mary Sharp should be sufficient. However, both the purchase agreement and the loan documents are signed by Robert Sharp alone. The loan agreement provides a place for a second debtor or co-signer to sign, but this space is left blank. It appears that Mary Sharp did not obligate herself in any way to defendant and therefore would not be entitled to disclosure. Her affidavit adds nothing to Robert Sharp's claim.

In addition, if plaintiffs could have stated a claim under the Illinois Motor Vehicle Retail Installment Act, Mr. Sharp's acknowledgment would provide "conclusive proof" of delivery according to the terms of that statute.

VII

Plaintiffs' final claim is that the district court improperly dismissed the class action request in *Childs v. First National Bank of Peoria*, No. 77-2031.[24] In this case the complaint consisted of six counts, three of which were for class action relief and three of which were for individual relief. The district court dismissed the entire complaint, including the class action counts.

While the reasons for the dismissal of the class action counts by the district court are not clear from the record provided on appeal,[25] the district judge was not required to reach the issue since the individual substantive claims by plaintiff were dismissed.[26] In light of our holding in Part III that this plaintiff has stated a cause of action under TILA, we direct the district court, on remand, also to consider the class action allegations of the complaint in this case.

---

[24] Plaintiffs also argue that this issue involves No. 78-1060. In light of our holding in Part II of this opinion that the substantive cause of action was properly dismissed, we need not reach the class action issue in that case. In addition, defendants seem to believe that No. 78-1059 is also involved (Defendants' Brief p. 62). Plaintiffs do not argue this issue in their briefs with regard to this case (Plaintiffs' Brief pps. 93-102; *but see* p. 9). In any case, because of our conclusions in Parts II and IV that the substantive claims in this case were properly dismissed, we need not reach the class action issue.

[25] Apparently the motion to dismiss was granted at an oral hearing on September 6, 1977. The transcript of that hearing has not been provided to this court.

[26] For example, the district court may have concluded that, since plaintiff's individual claims were meritless, plaintiff could not adequately represent the class for purposes of securing relief. Since the district court's reasons have not been presented to us, however, this is merely a surmise.

VIII

The disposition of the cases in this appeal is as follows: Nos. 77-2032, 77-2179, 77-2180, 78-1058 through 78-1069, and 78-1198 are affirmed; Nos. 77-2029, 77-2030 and 77-2031 are reversed and remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART.

OPINION BY JUDGE SPRECHER
United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 16, 1978

Before
HON. WALTER J. CUMMINGS, *Circuit Judge*
HON. ROBERT A. SPRECHER, *Circuit Judge*
HON. WILLIAM J. BAUER, *Circuit Judge*

	)	Appeals from the
	)	United States Dis-
	)	trict Court, for the
	)	Southern District
	)	of Illinois, Peoria
	)	Division.
	)	
Nos. 77-2029 through 77-2032, 78-1059 through 78-1069, 77-2179, 77-2180, 78-1058, and 78-1198	)	Nos. CV77-1053,
	)	CV77-1059,
	)	CV77-1072,
	)	CV77-1060,
DAVID J. BASHAM and LINDA C. BASHAM, et al.,	)	CV77-1080,
	)	CV77-1081,
Plaintiffs-Appellants,	)	CV77-1083,
	)	CV77-1088,
vs.	)	CV77-1089,
	)	CV77-1090,
FINANCE AMERICA CORPORATION, et al.,	)	CV77-1093,
	)	CV77-1102,
Defendants-Appellees.	)	CV77-1107,
	)	CV77-1116,
	)	CV77-1117,
	)	CV77-1087,
	)	CV77-1119,
	)	CV77-1120,
	)	CV77-1139,
	)	CV78-1007,

These causes came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois, Peoria Division, and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgments of the said District Court in these causes appealed from be, and the same hereby, Affirmed as to cases Nos. 77-2032, 77-2179, 77-2180, 78-1058 through 78-1069, and 78-1198; and are Reversed and Remanded as to Nos. 77-2029, 77-2030, and 77-2031, all cases are with costs, in accordance with the opinion of this court filed this date.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 24, 1978

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge

GAREY R. CHILDS, on behalf of himself and all others similarly situated, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Southern District of Illinois, Peoria Division.
No. 77-2031 vs.	)	
FIRST NATIONAL BANK OF PEORIA, Defendant-Appellee.	)	Civil No. 77-1072 Robert D. Morgan, *Judge.*

On consideration of the petition for rehearing and suggestion for rehearing *in banc* filed in the above-entitled cause by defendant-appellee, First National Bank of Peoria, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing, and suggestion that said petition be reheard *in banc* be, and the same is hereby, DENIED.

United States District Court

For the Southern District of Illinois, Northern Division

(Abstract of Record)

CHILDS -VS- FIRST NATIONAL BANK OF PEORIA
77-1072

* * *

Sept 6 Parties present by counsel for hearing on pending motions. Hear. on Def. Motion to Dismiss. Ordered that Mot. to Dismiss is allowed and Complaint is dismissed. (Morgan J.)

Sept 6 CLOSED —JS 6

STATUTES AND REGULATIONS INVOLVED

15 U.S.C. § 1604
Sec. 105. Regulations

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

15 U.S.C. § 1639
Sec. 129. Consumer Loans Not Under Open End Credit Plans

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge.

(5) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an extension of consumer credit not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an extension of consumer credit exceeding $75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(6) The number, amount, and the due dates or periods of payments scheduled to repay the indebtedness.

(7) The default, delinquency, or similar charges payable in the event of late payments.

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

15 U.S.C. § 1640
Sec. 130. Civil Liability

(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2) (A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

* * *

(e) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(f) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

12 C.F.R. § 226.2
Definitions and Rules of Construction

* * *

(gg) "Security interest" and "security" mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

12 C.F.R. § 226.8
Credit Other Than Open End—Specific Disclosures

* * *

(b) In any transaction subject to this section, the following items, as applicable, shall be disclosed:

(1) The date on which the finance charge begins to accrue if different from the date of the transaction.

(2) The finance charge expressed as an annual percentage rate, using the term "annual percentage rate," except in the case of a finance charge

(i) Which does not exceed $5 and is applicable to an amount financed not exceeding $75, or

(ii) Which does not exceed $7.50 and is applicable to an amount financed exceeding $75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate, nor may any other percentage rate be disclosed if none is stated in reliance upon subdivisions (i)

or (ii) of this subparagraph.

(3) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling and except in the case of a sale of a dwelling, the sum of such payments using the term, "total of payments."[10] If any payment is more than twice the amount of an otherwise regularly scheduled equal payment, the creditor shall identify the amount of such payment by the term "balloon payment" and shall state the conditions, if any, under which that payment may be refinanced if not paid when due.

(4) The amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.

(5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to

[10] The disclosures required by this sentence need not be made with respect to interim student loans made pursuant to Federally insured student loan programs under Public Law 89-329, Title IV Part B of the Higher Education Act of 1965, as amended.

the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

(6) A description of any penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation (such as a real estate mortgage) with an explanation of the method of computation of such penalty and the conditions under which it may be imposed.

(7) Identification of the method of computing any unearned portion of the finance charge in the event of prepayment in full of an obligation which includes precomputed finance charges and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer. If the credit contract does not provide for any rebate of unearned finance charges upon prepayment in full, this fact shall be disclosed.

(8) If the annual percentage rate as disclosed under § 226.8(b)(2) is prospectively subject to increase,[10a] the following additional disclosures shall be made:

(i) the fact that the annual percentage rate is subject to increase and the conditions under which such rate may increase, including: (A) identification of the index, if any, with respect to which such increase in annual percentage rate is tied; and (B) any limitation on such increase;

[10a] For this purpose, the phrase "prospectively subject to increase" does not apply to increases in the annual percentage rate upon such occurrences as default, acceleration, late payment, assumption or transfer of property.

(ii) the manner(s) (such as an increase in payment amounts, number of scheduled periodic payments, or in the amount due at maturity) in which any increase in the annual percentage rate may be effected;

(iii) if the obligation is repayable in substantially equal instalments at substantially equal intervals (including those obligations providing for "balloon" payments) and the increase could be effected by an increase in the periodic payment amount, a statement of the estimated increase in the amount of the payment caused by a hypothetical immedicate increase of one quarter of one percentage point, based upon the number of scheduled periodic payments and original amount financed disclosed at consummation;

(iv) if the obligation is repayable in substantially equal instalments at substantially equal intervals (including those obligations providing for "balloon" payments) and the increase could be effected by an increase in the number of periodic payments, a statement of the estimated increase in the number of periodic payments caused by a hypothetical immediate increase of one quarter of one percentage point, based upon the periodic payment amount and the original amount financed disclosed at consummation.

Any increase in the annual percentage rate within the conditions or limitations disclosed in accordance with this paragraph is a subsequent occurrence under § 226.6(g) and is not a refinancing under § 226.8(j).

The disclosures required under § 226.8(b)(8)(iii) and (iv) need be made only in transactions in which a security interest is taken in real property used or expected to be used as the customer's dwelling, and they need not be made in transactions primarily for agricultural purposes, transactions in which the obligation is repayable in substantially equal instalments which do not include repayments of principal, or transactions in which disclosures are made pursuant to § 226.814.

* * *

(d) In the case of a loan or extension of credit which is not a credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall be disclosed:

(1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed."

(2) Any amount referred to in paragraph (e) of this section required to be excluded from the amount in subparagraph (1) of this paragraph, using, as applicable, the terms "prepaid finance charge" and "required deposit balance," and, if both are applicable, the total of such items using the term, "total prepaid finance charge and required deposit balance."

(3) Except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge,[11] using the term "finance charge," and where the total charge consists of two or more types of charges, a description of the amount of each type.

12 C.F.R. § 226.202

SECTION 226.202—SECURITY INTEREST—CONFESSIONS OF JUDGMENT—COGNOVIT NOTES

Under § 226.2(gg) "security interest" is defined to

[11] The disclosure required by this subparagraph need not be made with respect to interim student loans made pursuant to Federally insured student loan programs under Public Law 89-329, Title IV Part B of the Higher Education Act of 1965, as amended.

include confessed liens whether or not recorded and, in general, to include any interest in property which secures payment or performance of an obligation. In certain transactions involving a security interest, under § 226.9 the customer has a right of rescission.

In some of the States, confession of judgment clauses or cognovit provisions are lawful and make it possible for the holder of an obligation containing such clause or provision to record a lien on property of the obligor simply by recordation entry of judgment; the obligor is afforded no opportunity to enter a defense against such action prior to entry of the judgment.

Since confession of judgment clauses and cognovit provisions in such States have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding *before* judgment may be entered or recorded against him, such clauses and provisions in those States are security interests under § 226.2(gg) and for the purposes of § 226.7(a)(7), §226.8(b)(5), and § 226.9. This is the case even if the judgment cannot be entered until after a default by the obligor.

Confession of judgment clauses and cognovit provisions which, by their terms, exclude a lien on all real property which is used or is expected to be used as the principal residence of the customer, would not bring a transaction under the provisions of § 226.9

Ill. Rev. Stat. ch. 26, § 9-204
After-acquired property; Future advances

* * *

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

Ill. Rev. Stat. ch. 77, §9
When execution binds personality—Noting receipt of

No execution shall bind the goods and chattels of the person against whom it is issued, until it is delivered to the sheriff or other proper officer to be executed; and for the better manifestation of the time, the sheriff or other officer shall, on receipt of such writ, indorse upon the back thereof the day of the month and year and hour when he received the same.

Ill. Rev. Stat. ch. 77, § 10
What liable to execution

All and singular the lands, tenements, his real estate, goods and chattels (except such as is by law declared to be exempt) of every person against whom any judgment has been or shall be hereafter obtained in any court, for any debt, damages, costs, or other sum of money, shall be liable to be sold upon execution, to be issued upon such judgment.

Ill. Rev. Stat. ch. 110, § 50
Judgments—Default—Confession

* * *

(3) Any person for a debt bona fide due may confess judgment by himself or attorney duly authorized, without process. The application to confess judgment shall be made in the county in which the note or obligation was executed or in the county in which one or more of the defendants reside or in any county in which is located any property, real or personal, owned by any one or more of the defendants. A judgment entered by any court in any county other than those herein specified has no force or validity, anything in the power to confess to the contrary notwithstanding.

DISCLOSURE STATEMENT OF LOAN

BORROWERS (NAMES AND ADDRESSES): LENDER: LOAN NO._____ Date_____

_____

_____ (STREET ADDRESS)

_____ (CITY) (STATE) (ZIP)

TOTAL OF PAYMENTS	FINANCE CHARGE	AMOUNT FINANCED	ANNUAL PERCENTAGE RATE:	CREDIT LIFE INSURANCE CHARGE	DISABILITY INSURANCE CHARGE	PROPERTY INSURANCE CHARGE
$	$	$	%	$	$	$

PAYABLE IN: CONSECUTIVE MONTHLY INSTALLMENTS	DUE DATE OF PAYMENTS			AMOUNT OF PAYMENTS			
	FIRST:	OTHERS: SAME DAY OF EACH MONTH	FINAL:	FIRST:	OTHERS:	FINAL:	RECORDING FEE
				$	$	$	$

INSURANCE

PROPERTY INSURANCE, if written in connection with this loan, may be obtained by borrower through any person of his choice. If borrower desires property insurance to be obtained through the creditor, the cost will be $_____ for the term of the credit.

CREDIT LIFE AND DISABILITY INSURANCE is not required to obtain this loan. No charge is made for credit insurance and no credit insurance is provided unless the borrower signs the appropriate statement below:

(a) The cost for Credit Life Insurance alone will be $_____ for the term of the credit.

(b) The cost for Credit Life and Disability Insurance will be $_____ for the term of the credit.

I desire Credit Life and Disability Insurance.		I desire Credit Life Insurance only.		I DO NOT want Credit Life or Disability Insurance.	
(Date)	(Signature)	(Date)	(Signature)	(Date)	(Signature)

REBATE FOR PREPAYMENT IN FULL. If the loan contract is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall receive a rebate of precomputed interest computed under the Rule of 78's.

DEFAULT CHARGE. [The creditor should set forth the amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.]

SECURITY

DESCRIPTION

A. ☐ This Loan is Secured By a Security Agreement of Even Date covering.....

☐ Motor Vehicle(s): Make- ..... Serial No: .....

☐ Household Goods & Appliances of the following description:.....

.....

.....

.....

☐ Other: (Describe) .....

The Security Agreement will secure future or other indebtedness and will cover after-acquired property.

B. ☐ This Loan is Unsecured.

I ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Borrower: .....

Witness: .....

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (d) of § 226.8 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

ILLUSTRATION OF FEDERAL DISCLOSURES ON A SEPARATE STATEMENT FOR A LOAN REPAYABLE IN INSTALLMENTS

(Section 226.8)

Regulation Z

Applicable Disclosures Shown on Exhibit E (opposite page)	Reference (226.8)
1. Identification of Transaction	(a)
2. "Amount Financed" including itemized charges other than finance charges. (Note § 226.4(b))	(d)(1)
3. "Finance Charge"	(d)(3)
4. "Annual Percentage Rate"	(b)(2)
5. Number, Amount, and Due Date of Payments	(b)(3)
6. "Total of Payments"	(b)(3)
7. Default, Delinquency, or Similar Charge	(b)(4)
8. Identification of Security Interest	(b)(5)
9. Identification of Property to Which Security Interest Relates	(b)(5)
10. Method of Computing Any Unearned Portion of the Finance Charge	(b)(7)
11. After-acquired Property Subject to Security Interest	(b)(5)
12. Security for Future Indebtedness	(b)(5)
13. Identification of Creditor	(a)
14. Credit Life, Accident, and Health Insurance	§ 226.4(a)(5)
15. Property and Liability Insurance	§ 226.4(a)(6)

Other Disclosures Not Applicable to Example Shown in Exhibit E

Regulation Z prescribes other disclosures to be made in connection with loan credit which are not applicable to the illustrated example, such as, prepaid finance charge (d)(2) required deposit balance (d)(2) and balloon payment (b)(3), etc.

NOTE AND SECURITY AGREEMENT

5325.64
AMOUNT OF LOAN

1-19-77.
DATE

DEBTOR

GAREY R. CHILDS 710 N. MAIN
Name Address

ABINGDON ILL. 61410 462-3626 368-58-2854
City State Zip Phone Social Security Number

FOR VALUE RECEIVED, I and we the undersigned, jointly and severally promise to pay to the order of **The First National Bank of Peoria,** 416 Main Street, Peoria, Illinois 61601 the sum of $ 5325.64 in 47 successive monthly instalments of $ 124.42 each and a final instalment, which shall be $ 124.42 beginning on February 15TH, 19 77 and thereafter on the same day of each subsequent month until paid in full. Unequal or irregular payment may be displayed below.

DETAILS OF UNEQUAL OR IRREGULAR PAYMENTS	AMT.: DUE ON (Mo.-Day-Yr.):	AMT.: DUE ON (Mo.-Day-Yr.):	AMT.: DUE ON (Mo.-Day-Yr.):	AMT.: DUE ON (Mo.-Day-Yr.):
	AMT.: DUE ON (Mo.-Day-Yr.):	AMT.: DUE ON (Mo.-Day-Yr.):	AMT.: DUE ON (Mo.-Day-Yr.):	AMT.: DUE ON (Mo.-Day-Yr.):

1. Debtor(s) agrees that the Collateral described herein shall be kept at the following address if different than above:

2. **CONFESSION OF JUDGMENT;** The undersigned, and each of them, hereby authorize irrevocably any attorney of any court of record to appear for any one or more of them, in such court, in term or vacation, after any default hereon and confess a judgment without process in favor of the Holder hereof for such amount as may appear unpaid hereon, together with cost of suit and reasonable attorneys' fees and to release and waive all errors that may intervene and consent to immediate execution thereon. Notwithstanding any provision hereof or of applicable law, Holder irrevocably waives all rights to make a judgment confessed herein a lien on any real property which is used or expected to be used as the principal residence of the undersigned Debtor:(s), in which the undersigned Debtor(s) may now or hereafter have an interest. A security interest in the personal property and real property other than principal residence of Debtor(s) is created by the Confession of Judgment clause herein.

Description or identification of the type of the security interest to be retained: ☒ Motor Vehicle ☐ Boat ☐ Mobile Home ☐ Appliances ☐ Farm Equipment ☐ OTHER

New or Used	Year and Make	Series	Body Style	No. Cyl.	Truck Ton Capacity	Manufacturer's Serial Number	Ignition Key Number	Color	Proposed Use
N	77 GMC	G1500	1/2 T. P.U.	8		TGU15745D3962		BLUE	☒ Personal ☐ Business ☐ Agriculture

☒ Automatic Trans. ☐ 4 Speed ☒ Power Steering ☒ Power Brakes ☐ Power Windows ☐ Power Seat ☒ Air Conditioner ☒ Radio ☒ Stereo ☒ Bucket Seats ☐ Fuel Injection ☐ _____

DESCRIPTION WHEN COLLATERAL IS OTHER GOODS:

INSURANCE AGREEMENT — GROUP CREDIT INSURANCE

Credit Insurance is not required by Bank to obtain this loan. No credit insurance is to be provided unless the Debtor signs the authorization below. Group Credit Insurance is available for the term of the credit at the following costs:

Credit Life Insurance $ 91.45

Credit Disability Insurance $ 138.48

NON-GROUP INSURANCE

Property insurance may be required by Bank. Debtor may obtain insurance through insurer of his choice so long as insurer is qualified to provide insurance under the provisions of the "Illinois Insurance Code" and all requirements of the Director of Insurance related thereto. If Debtor desires to borrow the premium, the cost is as follows:

$ _____ for the term of _____ months.

Single Premium Disability Income Insurance may be available from Debtor's own insurance agent. This is an individual policy and not a Group policy, and is not required by the lender to obtain this loan. If Debtor desires to borrow the premium, the cost is as follows:

$ _____ for the term of _____ months.

I desire the above insurance where premium amount is indicated

1-19-77 x Garey R. Childs
(DATE) Insured Debtor's Signature

STATEMENT OF TRANSACTION

1. Proceeds	$ 4318.20
2. Credit Life Insurance	$ 91.45
3. Credit Disability Insurance	$ 138.48
4. Property Insurance	$ _____
5. Single Premium Disability Income Insurance	$ _____
6. Other Charges	
Filing Fees/Non-Filing Ins.	$ _____
_____	$ _____
7. Amount Financed (Sum of 1, 2, 3, 4, 5 and 6)	$ 4447.93
8. **FINANCE CHARGE**	$ 877.71
Consisting of the following (Itemize):	
Interest $ _____	
Service Charge $ _____	
9. Total of Payments (Sum of 7 & 8)	$ 5325.64
10. **ANNUAL PERCENTAGE RATE**	9.28 %

SECURITY INTEREST: This loan is secured by a security interest created under this Security Agreement in the property described above which security interest may attach to any additions or accessions thereto. In addition to the foregoing security the Holder has a security interest for the payment of all obligations due it in all property and assets of Debtor(s) which are in the possession or control of Holder and a right of set-off or lien on any deposit or sums now or hereafter owed by Holder to Debtor(s). This Security Agreement will secure future or other indebtedness and will cover after acquired property. A security interest in the personal property and real property other than principal residence of Debtor is created by the Confession of Judgment Clause herein.

DEFAULT CHARGES: The undersigned further agree to promptly pay to the legal Holder hereof a delinquency charge on each principal instalment unpaid for a period of ten **(10)** days past its due date, equal to five persent **(5%)** of the instalment or five dollars **($5.00),** whichever is less. Debtor(s) is obligated to pay reasonable attorney's fees incurred by Holder in the collection or enforcement of debt. In the event of any default hereunder, (as detailed on reverse side hereof) the entire balance may be declared due and payable.

RIGHT OF PREPAYMENT: The Debtor(s) may satisfy in full at any time before maturity the debt evidenced by this document and in so satisfying shall receive a refund credit against the amount of the total **FINANCE CHARGE** (Item 8 above) added to the principal in an amount at least as great a portion of the total **FINANCE CHARGE** as the sum of the periodical time balances after the date of payment bears to the sum of all the periodical time balances under the schedule of payments provided for in this instrument, except that when the amount of the refund credit so computed is less than **$1.00** no refund credit need be made. This statutory computation employs the "sum of the digits" method, also known as the **"RULE OF 78THS".** Any partial prepayments accepted by the Holder hereof will be applied to the last instalment due hereunder and there shall be no reduction of the **FINANCE CHARGE.** Prepayment in full will reduce the Group Credit Insurance charge (if any) for this loan, however the Property Insurance policy and/or the Single Premium Disability Income Insurance policy must be returned directly to the insurance company for any possible refund of premium.

FINANCE CHARGE: The **FINANCE CHARGE** shall begin to accrue on the date that the loan evidenced hereby is disbursed by the Lender.

NOTICE: See other side for important information. (Additional Terms and Provisions continued on reverse side.)

THIS NOTE AND SECURITY AGREEMENT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE. BY EXECUTING THIS INSTRUMENT, DEBTOR(S) AGREES TO ALL ITS TERMS AND CONDITIONS AND ALSO ACKNOWLEDGES THE RECEIPT OF A COMPLETELY FILLED IN COPY PRIOR TO EXECUTION HEREOF. CO-SIGNER(S) IF ANY, ACKNOWLEDGES RECEIPT OF COMPLETED COPIES OF THIS NOTE AND SECURITY AGREEMENT.

DEBTOR X Garey R. Childs DEBTOR X _____

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